Supreme Court, U.S.
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No. 95-83

In The

Supreme Court of the United States

October Term, 1995

ALAN MEGHRIG AND MARGARET MEGHRIG,

Petitioners,

vs.

KFC WESTERN, INC.,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

OPPOSITION TO MOTION OF *AMICI CURIAE* MASSACHUSETTS, *ET AL.* FOR PERMISSION TO FILE A LATE BRIEF

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Throughout these proceedings, Petitioners have tried to conduct themselves with the courtesy and dignity befitting a proceeding in the United States Supreme Court. For example, we have readily agreed to all requests for consent to file *amicus* briefs, even those opposing Petitioners' position and even those that have come to us within the last 48 hours before a filing deadline. We were contacted by both the Bi-State Development Agency of the Missouri-Illinois Metropolitan District and Kaufman & Broad Home Corporation and gave consent for each to appear as an *amicus* in support of Respondent. We have also readily supplied copies of our briefs and those of Respondent to opposing *amici* on request.

However, we were never contacted by several other *amici* who have appeared in this case, including the moving *amici*, to seek consent or to alert Petitioners to the fact that they would be appearing on behalf of Respondent. We understand that *amici* states are not required to seek consent prior to filing. However, given the shortened 20 day time period within which Petitioners have been required to prepare and file a reply brief, several days of which were taken up by the Christmas holiday, such notification would appear to have been an appropriate courtesy. That is particularly so because the moving *amici's* lengthy brief (30 pages) embarked on an entirely new analytical focus (although one not materially different from Respondent's new focus) in arguing that the Ninth Circuit Court of Appeal should be affirmed.

The moving *amici* served their surprise brief by first class mail, rather than overnight mail, on its due date, December 8th, and the brief did not arrive in Petitioners' counsel's offices until December 12. This further reduced the short amount of time available to Petitioners to prepare a response.[1]

The effect of all of this has been to put an increased burden on Petitioners to prepare a response to an entirely new

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[1] That discourtesy has now been repeated by the moving parties. They filed their motion on or about December 19, again without any notice to Petitioners, and again served the motion by first class mail such that it was not received by Petitioners until December 26.

analytical construct in an extremely short time frame made shorter by the moving *amici's* acts. While it is certainly within the discretion of this Court to grant the moving *amici* permission to file out of time, given the circumstances and the insensitivities exhibited by the moving parties, this would appear to be an instance in which that motion should be denied.

Dated: December 28, 1995.

Respectfully submitted,

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